

REQUEST FOR PROPOSAL FOR FINANCIAL CONSULTING SERVICES

RFP No. 2021-003 Financial Consulting Services

Issued by:



Due Date: October 14, 2021 (5:00 p.m. Mountain Time)

PART A OVERVIEW, SCOPE OF WORK AND INSTRUCTIONS

SECTION

1.0 Introduction to Request for Proposal (RFP)

1.1 Definitions

As used in this RFP, "RFP" means this Request for Proposals to my529 (i.e., RFP No. 2021-003 Financial Consulting Services).

1.2 my529 Background Information

The Utah Educational Savings Plan, doing business as my529, was established by the Utah State Legislature as a nonprofit, self-supporting agency that administers a public trust. The 529 plan offered by my529 is designed to comply with Section 529 of the Internal Revenue Code of 1986, as amended. The Utah Board of Higher Education acting in its capacity as the Utah Higher Education Assistance Authority (UHEAA) administers and manages my529. It is the official and only Section 529 plan sponsored by the state of Utah. For a complete description of plan details, see the my529 Program Description dated July 15, 2021, which can be downloaded from the my529 website at my529.org.

As of September 1, 2021, my529 had more than 465,000 accounts and more than \$20 billion in assets under management. my529 offers 13 investment options with underlying investments in mutual funds managed by Vanguard® and Dimensional Fund Advisors, an FDIC-insured account held in trust by my529 with Sallie Mae Bank and U.S. Bank, and a stable value fund managed by PIMCO. The Vanguard and Dimensional funds, the PIMCO Interest Income Fund, and the FDIC-insured accounts are known as "underlying investments." Each of my529's investment options comprises some combination of underlying investments. my529 units represent ownership interests in the investment options issued by the my529 trust. The net asset value (NAV) of a my529 unit is based on the value of the unit's underlying investment and the daily accrual of my529 dividends, interest and asset-based fees.

my529 is the record keeper for its accounts and currently manages all account records and administrative services through the my529 System. my529 employees have access to the my529 System for daily administration, record keeping, and customer service inquiries. These employees receive and process all my529 account transactions, such as account agreements, contributions, investment option changes, withdrawal requests, and demographic account change requests. Account owners may also log in at my529.org, which allows them to manage their accounts and perform a variety of transactions online.

my529 currently employs State Street Bank and Trust Company ("State Street") as the custodian of certain assets of my529. State Street is also employed to provide trading and settlement services, fund accounting, and daily NAV calculations for each of my529's investment options. The NAVs provide daily pricing for all my529 units and are the basis for calculating the total value for every my529 account.

Each business day, my529 processes account transactions and settles trades by transferring funds between its bank account and fund custodians and/or fund managers, as applicable.

Balance information for individual accounts is updated daily in the my529 System based on portfolio NAVs provided by State Street Bank. Account owners can monitor the value of and activity in their accounts by logging in to my529's website or calling my529 during operating hours. my529 generates and provides its account owners with quarterly account statements, which are also available online. my529 also publishes monthly performance information for each investment option.

1.3 Statement of Purpose

my529 intends to enter into a contract with a qualified financial consultant to provide financial consultant services for record keeping, fund accounting and NAV pricing for the my529 investment options, as well as other professional services as requested by my529. It is anticipated that this RFP will result in a contract award to a single contractor.

The duration of the contract awarded as a result of this RFP is expected to be five years from the date of execution.

This RFP is designed to clearly outline specifications, and to provide interested consultants with information sufficient to provide comprehensive responses regarding their capabilities.

1.4 Detailed Scope of Services

my529 intends to retain the services of a financial consultant with extensive experience relating to record keeping securities, portfolio NAV pricing, fund accounting and related calculations. The selected respondent will provide general advice and counsel to my529's staff and the investment advisory committee.

my529 expects the selected consultant to provide at least the following services below, on an as needed basis as directed by my529. Provide evidence of respondent's ability to provide the following services (the "Services"):

- A. Review the my529 system and operational functions and recommend strategic solutions for infrastructure improvements to support current and future investments offered by my529
- B. Provide guidance on industry best practices for investment administration, financial calculations (including pricing and NAV), and reporting, as requested by my529; and
- C. Providing consulting and other specific professional services as requested by my529.

1.5 Mandatory Minimum Requirements

Address the minimum qualifications stated below. Failure to meet these minimum qualifications will cause your proposal to be considered nonresponsive and the proposal will be rejected. NOTE: You will be asked to describe how you meet these qualifications in your proposal in response to Part B, Section 1.3.

- A. Respondent must have provided financial consulting services to or on behalf of public or private entities for a minimum of five (5) years;
- B. Electronic trade and settlement processes for investments across multiple managers or distributors;
- C. Knowledge of custody, fund accounting, and transfer agencies functions;
- D. Calculation of NAV, investment performance, and personal rates of return for individual accounts;
- E. Global Investment Performance Standards (GIPS);
- F. Dividend and capital gain calculations and distributions; and

2.0 Response Guidelines and Terms

2.1 Submission of RFP Response.

Your RFP response **must be submitted electronically in two separate parts: Detailed RFP Response, and Cost Proposal.** These must be submitted at the same time. Electronic submission should be made by emailing rfp@my529.org. No hard copies will be accepted. Your two-part response must be received prior to **October 14, 2021, at 5:00 p.m. MT**. RFP responses received after the deadline are ineligible for consideration.

2.2 Issuing Office and RFP Reference Code

my529 is issuing this RFP and all subsequent addenda relating to it. The reference code is "RFP No. 2021-003 my529 – Financial Consulting Services." This code must be referenced on all proposals, correspondence, and documentation relating to the RFP.

NOTICE: Whenever the terms "bid", "bidder", "bidding," or "quote" appear in this RFP, or reference is made to a bid, bidder, bidding, or quote, the term or reference shall be interpreted to mean, as

applicable, offeror, as defined in Utah Code Ann. Section 63G-6a-103(54), or Request for Proposals, as defined in Utah Code Ann. Section 63G-6a-103(72). The procurement shall be conducted subject to the provisions of Utah Code Ann. Sections 63G-6a-701 through 712.

2.3 Other Communications

During the RFP process (from the date of issue through the date of contract award or other final decision), my529 will be the sole source of official information regarding this RFP. Changes to the RFP will be issued as a formal, written addendum. Any and all oral agreements or conversations are not binding on my529. Signed, written agreements represent the only contractual obligations of my529.

2.4 Schedule (Key Action Dates).

All Respondents are hereby advised of the following schedule and will be expected to adhere to the required dates and times (all times listed are Mountain Time (MT)).

Date	Action
September 27, 2021	RFP available to Prospective Respondents
October 4, 2021, 5:00 p.m. MT	Written Question Submittal Deadline
October 6, 2021	Answers to Written Questions Distributed
October 14, 2021, 5:00 p.m. MT	Deadline for Proposal Submission
October 18 - 22, 2021	Evaluation of Proposals
October 18 - 22, 2021	Oral Interviews (if applicable)
October 25, 2021, or sooner	Contract Awarded

my529 reserves the right to change the above dates and times, and, if so, changes will be posted to the Utah Public Notice web site. my529 also reserves the right not to award an agreement at all.

2.5 Questions.

All questions must be submitted to rfp@my529.org. Questions submitted through any other channel will not be answered. Questions will be accepted until 5:00 p.m. MT on October 4, 2021. Questions will not be accepted after that date. Answers will be provided on the Utah Public Notice web site. Only answers posted to the aforementioned web site shall serve as the official and binding position of my529.

With the sole exception of submitting questions as just described, respondents shall not communicate about this RFP directly with my529 or any directors or other employees of my529. Any such communication will automatically disqualify the respondent and its proposal from consideration.

2.6 Addenda.

Respondents should periodically check the Utah Public Notice web site for posted questions, answers and addenda. Any modification to this procurement will be made through the Utah Public Notice web site. Only authorized and properly issued addenda shall constitute the official and binding position of my529. Any response to this RFP which has as its basis any communications or information received from sources other than this RFP or related official addenda could be considered non-responsive and be rejected at the sole discretion of my529. If it becomes necessary to revise this RFP completely or in part, an addendum will be issued as a formal, written addendum.

2.7 Incurring Costs.

my529 will not be liable for costs that respondents may incur in connection with the preparation, submission, or presentation of their proposals, including all travel, dining, lodging, and communication expenses. Proposals should be concise, straightforward, and prepared simply and economically. Expensive displays, bindings, or promotional materials are neither desired nor required. However, these instructions should not limit a proposal's content or exclude any relevant or essential data.

my529 will not be liable for any costs of the successful respondent relating to conducting contract negotiations, including drafting, research, legal review, preparation, attending meetings, travel, dining, lodging, and communication expenses.

2.8 Rejection of Proposals.

my529 reserves the right to reject any or all RFP responses received.

2.9 Protected Information.

Because my529 is exempt from the provisions of the Government Records Access and Management Act (GRAMA), neither proposals submitted to my529 or my529's contracts are public records. Accordingly, except as is explained below, neither the names of those individuals or organizations responding to this RFP; the responses to this RFP, including material contained or submitted with the responses; nor the contract will be open for public inspection.

In accordance with the Procurement Code, Utah Code Ann. Section 63G-6a-2002(3), my529 shall keep, and make available to the public, a written record of the procurement, which record shall consist of (a) the name of the provider from whom the procurement is made; (b) a description of the procurement item; (c) the date of the procurement; and (d) the expenditure made for the procurement.

The contents of all responses to this RFP become the property of my529 and may be returned only at my529's option.

2.10 Acknowledgement and Submitting Your Proposal.

NOTICE: By submitting a proposal in response to this RFP, Respondent is acknowledging that the requirements, scope of work, and the evaluation process, outlined in the RFP are fair, equitable, not unduly restrictive, understood and agreed upon. Any ambiguity, inconsistency, excessively restrictive requirements, errors in the solicitation documents, solicitation questions, or exception to the scope/content of the RFP must be submitted as a question rfp@my529.org) during the solicitation process and prior to the due date and time for questions. Exceptions to scope/specifications of the RFP that have not been previously addressed within the Q&A period of the procurement will be disallowed.

Proposals will only be accepted electronically. No hard copies will be accepted. Submit your proposal via email at rfp@my529.org.

PLEASE NOTE: Proposals must be received by the Proposal Due Date and time. Proposals received after the deadline will be late and ineligible for consideration.

2.11 Reservation of Rights

The issuance of this RFP in no way constitutes a commitment by my529 to award a contract. my529 reserves the right to reject all proposals, to cancel this RFP at any time, or to issue a new RFP for the same or similar services. my529 may waive any informality or technicality in any proposal that would not serve the interest of my529.

3.0 Format of Response

3.1 Proposal Response Deliverables

Submit proposals as set forth above in Section 2.1. Proposals should provide straightforward and concise descriptions of the Respondent's ability to satisfy the requirements of the RFP with pertinent supplemental information referenced and included as attachments. All proposals must be organized and labeled to comply with the following sections:

Section A: Transmittal Letter. Include the Respondent's name, address, telephone number, and email address of the person to be contacted along with others who are authorized to represent the organization in dealing with this RFP. Any other information not contained in the proposal itself should also be included in the letter.

Section B: Executive Summary. A one or two page executive summary briefly describing the Respondent's qualifications and ability to provide the services described in this RFP. Also indicate any requirements that cannot be met by the Respondent.

Section C: Detailed Discussion. This section should constitute the major portion of the proposal and must contain a specific response to Part B of this RFP. Outline numbers should correspond, in order, to the section numbers contained in this RFP. my529 recommends that the Respondent re-state questions (delineated by bold font) contained within this RFP with the corresponding answers (delineated by non-bolded font) following each question.

Section D: Potential Conflicts of Interest. Identify any conflict, or *potential* conflict of interest that might arise during the term of this contract. **If no conflicts are expected, include a statement to that effect in the RFP response.**

Section E: Cost Proposal. The Respondent must submit *separately from the main RFP response* a specific cost proposal in response to Part B, Section 2, of this RFP. This section will be evaluated independently of other criteria in the proposal. **The cost proposal is to be sent as a separate attachment to the proposal.**

Section F: Additional Information. Additional information and attachments, if any, may be submitted by the Respondent. The Respondent must describe why such additional information is included in the submission. my529 may choose not to include such information in its evaluation of the proposal.

Failure to provide a written response to items indicated in this RFP will be interpreted by my529 as an inability by the Respondent to provide the requested product, service, or function. Responses should not be composed of a link to a vendor or partner website.

3.2 Discussions and Best and Final Offers

Discussions with Respondents (Optional). After RFP responses are received and evaluated, my529 may conduct discussions with respondents and allow the respondents to make best and final offers. If discussions are held, my529 will:

- Ensure that each respondent receives fair and equal treatment with respect to the other respondents;
- Establish a schedule and procedures for conducting discussions;
- Ensure that information in each response and information gathered during discussions is not shared with other respondents until a contract is awarded;
- Ensure auction tactics are not used in the discussion process including discussing and comparing the features of other responses; and
- If necessary, set a common date and time for the submission of best and final offers.

Oral Presentations (Optional). If it is determined by the procurement officer that oral presentations are necessary to assist the evaluation committee in finalizing the scoring of responses, they will be scheduled by the procurement officer.

- The Respondent's original response cannot be changed in any aspect at the oral presentation. The oral presentation will provide respondents with the opportunity to discuss with the evaluation committee any aspects of their response that might contribute to their prequalification.
- Respondents are advised that the evaluation committee will be afforded the opportunity to revise their evaluation scores based upon the oral presentation.
- The procurement officer will establish a date and time for the oral presentation and will notify eligible respondents of the protocols, procedures, and structure of the oral presentations. Oral presentations will be made at the Respondent's expense.

Interview (Optional). The purpose of the interview is to allow the Respondent to present its qualifications, experience, and plan for complying with scope of services requirements. It will also provide an opportunity for the evaluation committee to seek any needed clarification from the

Respondent. The procurement officer will notify eligible respondents of the date and time of the interview and who should be in attendance. The method of presentation is at the discretion of Respondent.

3.3 Modifications to, or Withdrawal of a Proposal

Respondent may modify or withdraw a proposal to this RFP at any time before the closing date and time of this RFP by providing my529 a written modification or written statement withdrawing the proposal.

3.4 Administrative Guidance

The information provided in this RFP is intended to assist respondents in preparing proposals, but is not intended to limit a proposal's content or to exclude any relevant or essential data. Respondents are encouraged to expand upon the specifications to give additional evidence of their ability to provide the services requested in this RFP.

PART B INFORMATION REQUIRED IN SUBMISSION OF A PROPOSAL

SECTION

1.0 Respondent Proposal

1.1 Required Information (Zero (0) points)

- A. State the name, address, telephone and fax numbers, and email addresses of Respondent's firm and the person who will have ultimate responsibility for this contract.
- B. Disclose any other legal or disciplinary event that is material to my529's evaluation of the respondent or the integrity of respondent's management.
- C. Advise if any partner, officer, investment officer, portfolio manager, research analyst, or trader of the respondent's firm has been convicted or pleaded no contest in a case stemming from a felony indictment. Any such conviction or plea must be disclosed and must be accompanied by a full explanation of the circumstances surrounding it.
- D. Advise if the respondent is or was a defendant in litigation relating to any services which it proposes to provide to my529. Any final settlement, administrative decision, or judgment, made in connection with this litigation must be disclosed and must be accompanied by a full explanation of the circumstances surrounding it.
- E. Advise if the respondent, any partner, related company (parent, subsidiary, sister), affiliate or joint venture, or any owner, officer, director, principal, or management level employee of the respondent has been involved in any enforcement action by any governmental regulatory agency or been named a defendant in litigation where there was an allegation of violation of fiduciary responsibility. If yes, explain in detail.
- F. Advise if the respondent has ever been terminated for cause from any contract. If the answer is yes, cite the background of the contract, reason for the termination, and what the respondent has done to change operations or personnel to preclude the circumstance regarding the termination from reoccurring.
- G. Disclose any business relationships, which may be construed to be potential or actual conflicts of interest. The contractor will have a continuing requirement to disclose any business relationships that may be construed to be a potential or actual conflict. The disclosure must be sufficiently detailed to inform my529 of the nature, implications and potential consequences of each conflict and must include an explanation of how the respondent addresses, or intends to manage or mitigate, each conflict.
- H. my529 may reject a proposal due to any disclosure or conflict of interest (potential or actual) that is material in the sole opinion of my529.

1.2 Respondent's Background and Personnel Information (Maximum of 270 points)

- A. Provide an overview of the respondent's firm including number of years of experience providing financial consultation, and what services the firm will bring to this contract.
- B. Describe the organizational structure and explain how this structure will be used to perform the requirements of this contract. Explain the advantages of this structure.
- C. Within the past three years, have there been any significant developments in your organization (e.g. changes in ownership, personnel reorganization)? If so, please describe.
- D. Do you anticipate any near-term changes in your organization's basic ownership structure or any other significant changes in your organization? If so, please describe.
- E. Complete the following table for professionals who will be responsible for providing the consulting activities to be performed pursuant to this contract.

Name & Location	Title & Responsibility	Total Years of Experience	Year with Firm	Most advanced Degree

- F. Provide professional resumes of each of the individuals who will be assigned to this account and the professional resumes of all individuals who will be responsible for reviewing or otherwise influencing the work of individuals assigned to the account.
- G. Indicate who will have ultimate responsibility for this contract. Indicate the availability of this person for live or telephone meetings with my529 or its designee. How many other client relationships will each individual have?
- H. Describe the turnover of professional staff (specifically senior management and key professionals) over the past five years.

1.3 Firm's Experience in Financial Consulting (Maximum of 430 points)

- A. Describe your firm's experience as a financial consultant performing the scope of work entailed in this RFP. Include the types and sizes of institutions for which you have consulted.
- B. Provide the names of 529 College Savings Programs for which your firm has been a consultant.
- C. Describe how your firm's qualifications and experience meet the mandatory minimum requirements as set forth in Part A, Section 1.5.
 - a. Respondent must have provided financial consulting services to or on behalf of public or private entities for a minimum of five (5) years.
 - b. Electronic trade and settlement processes for investments across multiple managers or distributors.
 - c. Knowledge of custody, fund accounting, and transfer agencies functions.
 - d. Calculation of NAV, investment performance, and personal rates of return for individual accounts.
 - e. Global Investment Performance Standards (GIPS).
 - f. Capital gain and dividend and fee accrual calculations and distributions.
- D. List any consulting accounts lost or prematurely discontinued within the past three years and note the reason for the loss of the account.

1.4 References (Maximum of 100 points)

Please provide at least three references that currently use your services, including name of the organization and a contact's name and title, telephone number, and email address. my529 will contact references to evaluate their experiences with the respondent.

2.0 Cost Proposal**2.1 Compensation and Billing (Maximum of 200 points)**

Describe in detail the respondent's proposed hourly rates, what out-of-pocket costs (including travel) will be reimbursed, and the billing method.

PART C PROPOSAL EVALUATION**SECTION****1.0 Proposal Evaluation****1.1 Evaluation Criteria**

An evaluation committee will evaluate proposals against the following weighted criteria. Each area of the evaluation criteria must be addressed in detail in proposal.

Evaluation Criteria	Maximum Points
Background and Personnel Information (See Part B, Section 1.2)	270
Experience in Financial Consulting (See Part B, Section 1.3)	430
References (See Part B, Section 1.4)	100
Overall cost of the services (including any out-of-pocket and travel costs) (See Part B, Section 2.1)	200
Total Points	1,000

1.2 Evaluation Process

All proposals timely received as described in Part A, Section 2.1 of this RFP must meet all of the Minimum Qualifications outlined in Part A, Section 1.5. Any proposal not meeting the minimum qualifications will be considered non-responsive and will not receive further consideration. Additionally, any proposal that fails to conform to all material requirements of the RFP will be disqualified from further consideration.

my529 specifically reserves the right to disqualify any response for:

- A violation of the Utah Procurement Code;
- A violation of a requirement of this RFP, including significant deviations or exceptions;
- Unlawful or unethical conduct; or
- A change in circumstances that, had the change been known at the time the response was submitted, would have caused the response to be disqualified or not have the highest score.

Each Respondent has sole responsibility for the items included or not included in the response it submits.

An evaluation committee will review all proposals still under consideration at the conclusion of this initial screening phase. Each of these proposals will be evaluated according to the evaluation criteria set forth in the Evaluation Score Sheet, a copy of which is attached to this RFP as Attachment B. At the conclusion of this phase, an evaluation of the cost proposals will be conducted.

my529 will use the following cost formula: The points assigned to each offeror's cost proposal will be based on the lowest proposal price. The offeror with the lowest Proposed Price will receive 100% of the price points. All other offerors will receive a portion of the total cost points based on what percentage higher their Proposed Price is than the Lowest Proposed Price. An offeror whose Proposed Price is more than double (200%) the Lowest Proposed Price will receive no points. The formula to compute the points is: $\text{Cost Points} \times (2 - \text{Proposed Price} / \text{Lowest Proposed Price})$.

The evaluation scores will then be combined with the cost scores to form a composite score.

my529 may evaluate proposals received without oral presentations by respondents. Accordingly, each written proposal should be submitted with the most favorable rate and information available. my529 reserves the right to be the sole judge as to the overall acceptability of any proposal or to judge the individual merits of specific provisions within competing offers. my529 may exercise any of the rights reserved in Part A, Section 2.0, including the right not to award a contract to any respondent.

PART D CONTRACT ITEMS

SECTION

1.0 Agreement

1.1 Award of the Contract

Upon completion of the evaluation process, my529 may award a contract to the respondent(s) whose proposal response has met all mandatory minimum requirements and receives the highest score in the technical and cost evaluations by the evaluation committee.

The successful respondent(s) will be required to enter into a contract with my529 providing the scope of services, compensation, and an obligation to protect confidential information.

The anticipated contract term will be five years from the date of execution. The anticipated effective date of the contract is on or before October 25, 2021.

Any contract resulting from the RFP will incorporate all provisions of the **Terms and Conditions for as set forth in Attachment A, and the Detailed Scope of Services (Part A, Section 1.4).**

Requests for exemptions from, or exceptions and/or additions to the Terms and Conditions for can be submitted but are strongly discouraged.

Proposed exemptions, exceptions or additions to the Terms and Conditions *must be submitted as part of the RFP response*. Exemptions, exceptions, additions, service level agreements, etc. submitted after the date and time for receipt of responses will not be considered. Website URLs, or information on website URLs may not be incorporated into any form of proposed exception or addition to the Terms and Conditions. URLs provided as part of a response may result in that response being rejected as non-responsive. Also, any use of URLs within the final contract are prohibited.

All pricing must be guaranteed for the entire term of the contract.

my529 retains the right to refuse to negotiate on contract exceptions should the exceptions be excessive, not in the best interest of my529, or if such negotiations or exceptions could result in excessive costs to my529, or could adversely impact existing time constraints.

If negotiations are required, Respondent must provide all documents in Microsoft Word format for redline editing. Firm must provide the name, contact information, and access to the person(s) that will be directly involved in legal negotiations.

Contracts written pursuant to the RFP will not be legally binding without the written approval of the Executive Director of my529.

1.2 Authorized Respondent Representatives

my529 reserves the right to require a change in the individual assigned to represent the Respondent if the assigned representative is not serving the needs of my529 in an acceptable manner. This right shall carry forward through the response period and, with the successful Respondent, during the term of the contract.

1.3 Restrictions on Publicity

The successful Respondent may not, without the prior written approval of my529, do any of the following:

- Make any announcement regarding the award of the contract relating to this RFP.
- Refer to my529, or use any data, pictures, or other representation of my529, in its advertising, marketing, or other promotional efforts.
- News releases pertaining to the RFP, any proposal, or the contract will be made only by my529.

1.4 Research Regarding Respondent

my529 reserves the right to conduct a background check of each person or entity that may assist in providing services under a response to this RFP to determine the person's fitness and qualifications to

fulfill the requirements of this RFP. my529 may reject any response to this RFP that involves services from a person or entity that my529 determines is unfit or unqualified to fulfill the requirements of this RFP. Upon request by my529, Respondent shall obtain, at Respondent's expense, a criminal background check from the Utah Department of Public Safety, Bureau of Criminal Investigation for the Respondent, each officer of the Respondent, and each person associated with the Respondent who will perform the work described in this RFP. Respondent will provide my529 with the results of each criminal background check obtained at the request of my529.

1.5 Outstanding Tax Lien

By responding to this RFP, the Respondent affirms that it does not have any outstanding tax liens issued by the Utah State Tax Commission.

1.6 Independent Contractor

An independent contractor is not an employee of my529, UHEAA, the State Board of Regents, the State of Utah, or any other public person or entity. my529 will not provide benefits and consultant will be responsible for its own tax reporting, withholding, and payment.

1.7 Consulting Services Commitment

The work may only be part-time work on an as-needed basis, which will vary based upon projects and time of year.

1.8 Standard Terms and Conditions

The anticipated contract will be subject to the terms and conditions as set forth in Attachment A.

ATTACHMENT A

TERMS AND CONDITIONS FOR CONTRACT FOR COMPREHENSIVE FRAUD AND SECURITY ASSESSMENT

1. **Authority.** Provisions of this Contract are pursuant to the authority set forth in Procurement Code, Utah Code Ann. Section 63G-6a, and related statutes that permit my529 to purchase certain specified services, and other approved purchases.
2. **Contract Jurisdiction, Choice of Law, and Venue.** The Contract shall be governed by and construed in accordance with the laws of the State of Utah without regard to any conflict of law principles that would result in the application of any law other than the law of the State of Utah. All disputes will be heard in the state or federal courts located in Salt Lake City, Utah.
3. **Laws and Regulations.** Contractor and any and all supplies, services, equipment, and construction furnished under this Contract will comply fully with all applicable Federal, State, and local laws, codes, rules, regulations, and ordinances, including applicable licensure and certification requirements.
4. **Records Administration.** Contractor shall maintain, or supervise the maintenance of, all records necessary to properly account for the payments made to Contractor for costs authorized by this Contract. These records shall be retained by Contractor for at least four years after the Contract terminates, or until all audits initiated within the four years have been completed, whichever is later. Contractor agrees to allow my529, State and Federal auditors, and State Agency staff access to all the records to this Contract for audit, inspection, and monitoring of services. Such access will be during normal business hours or by appointment.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM".** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to other types of procurement processes, including, but not limited to, Invitation for Bids or to Multiple Stage Bids.

5.1 Status Verification System

1. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including UCA Section 63G-12-302.
2. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including UCA Section 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
3. The State will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.
4. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-12-302.

5.2 Indemnity Clause for Status Verification System

1. Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

2. Notwithstanding Section 5.2.1 above, Design Professionals or Designers under direct contract with the State shall only be required to indemnify the State for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify the State in regard to subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.

6. **Time Is of the Essence.** For all work and services under this Contract, time is of the essence and Contractor shall be liable for all damages to my529, the State of Utah, and anyone for whom my529 and the State of Utah may be liable, as a result of the failure to timely complete the scope of work required under this Contract.
7. **Payment.**
 - a. **Timing.** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 60 days from the date a correct invoice is received by the appropriate my529 official, Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Utah Code Ann. Section 15-6-3. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue. Unless otherwise stated in the Contract, all payments to Contractor will be remitted by mail or electronic funds transfer.
 - b. **Final Payment.** The acceptance by Contractor of final payment without a written protest filed with my529 within 10 working days of receipt of final payment shall release my529 from all claims and all liability to Contractor for fees and costs of the performance of the services pursuant to this Contract.
8. **Prompt Payment Discount.** Contractor may quote a prompt payment discount based upon early payment. Contractor shall list Payment Discount Terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.
9. **Document Ownership.** Contractor agrees that any work/services and all Deliverables prepared for my529, to the extent to which they are eligible under copyright law in any country, shall be deemed a work made for hire, such that all right, title, and interest in the work and Deliverables reside with my529. To the extent any work or Deliverable is deemed not to be, for any reason whatsoever, work made for hire, Contractor agrees to assign and hereby assigns all right, title, and interest, including but not limited to, copyright, patent, trademark, and trade secret, to such work and Deliverables, and all extensions and renewals thereof, to my529. Contractor further agrees to provide all assistance reasonably requested by my529 in the establishment, preservation, and enforcement of its rights in such work and Deliverables, or subsequent amendments or modifications to such work and Deliverables, without any additional compensation to

Contractor. Contractor agrees to waive, and hereby, to the extent permissible, waives, all rights relating to such work and Deliverables, or subsequent amendments or modifications to such work and Deliverables, including without limitation any and all rights of identification of authorship, and any and all rights of approval, restriction, or limitation on use.

10. **Conflict of Interest.** Contractor represents that none of its officers or employees are officers or employees of my529, unless disclosure has been made in accordance with Utah Code Ann. Section 67-16-8. Contractor also represents that it has no conflict of interest in performing the services for my529 under this Contract, unless such conflict of interest has been disclosed to my529 and approval to proceed, notwithstanding the conflict, has been obtained from my529 in writing.
11. **Contractor Is an Independent Contractor.** Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind my529 to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for my529, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to Contractor by my529. Contractor shall be responsible for the payment of all income tax and Social Security amounts due as a result of payments received from my529 for these Contract services. Persons employed by my529 and acting under the direction of my529 shall not be deemed to be employees or agents of Contractor.
12. **Indemnity Clause.** Contractor agrees to indemnify, save harmless, and release my529, the State of Utah, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this Contract which are caused in whole or in part by the acts or negligence of Contractor's officers, agents, volunteers, or employees, but not for claims arising from my529's sole negligence. The parties agree that if there are any Limitations of Contractor's Liability, including a Limitation of Liability for anyone for whom Contractor is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages to property.
13. **Employment Practices Clause.** Contractor agrees to abide by the provisions of Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90, which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities. Also, Contractor agrees to abide by Utah's Executive Order, dated December 13, 2006, which prohibits sexual harassment in the workplace. Contractor also agrees to abide by any laws and policies of my529 and/or the State of Utah regarding any of the above mentioned prohibitions in this paragraph.
14. **Performance Evaluation.** my529 may conduct a performance evaluation of Contractor's services, including specific personnel of Contractor. References in the Contract to Contractor shall include Contractor, Contractor's subcontractors, or subconsultants at any tier, if any. Results of any evaluation will be made available to Contractor.
15. **Waivers.** No waiver by my529 or Contractor of any default shall constitute a waiver of the same default at a later time or of a different default.
16. **Separability Clause.** A declaration by any court, or any other binding legal authority, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
17. **Renegotiation or Modifications.** This Contract may be amended, modified, or supplemented only by written amendment to this Contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of this Contract. Automatic renewals will not apply to this Contract.
18. **Termination.**
 - a. **Notification.** Unless otherwise stated in these terms and conditions, if applicable, this Contract may be terminated, with cause by either party, in advance of the specified termination date, upon

written notice being given by the other party. The party in violation will be given 10 working days after notification to correct and cease the violations, after which this Contract may be terminated for cause. This Contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 60 days prior written notice being given to the other party. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

- b. **Compensation.** In the event of such termination, Contractor shall be compensated for services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from my529 is limited to full payment for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate contracts necessarily and appropriately entered into by Contractor pursuant to this Contract. Contractor further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, and any and all documents produced by Contractor under this Contract up to the date of termination are the property of my529 and shall be promptly delivered to my529.

19. **Insurance.**

- a. **Obtain and Maintain.** To protect against liability, loss, and/or expense in connection with the performance of services described under this Contract, Contractor shall obtain and maintain in force during the entire period of this Contract without interruption, at its own expense, insurance as listed below from insurance companies authorized to do business in the State of Utah and with an A.M. Best rating as approved by the State of Utah Division of Risk Management.
- b. **Minimum Coverage.** Contractor must carry insurance with policy limits no less than one million per incident and one million in the aggregate. Contractor must provide proof of insurance to my529 and must add my529 as an additional insured with notice of cancellation. The following are minimum coverages that may be supplemented by an amendment to this Contract:
 - (i) Worker's compensation insurance and employers' liability insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction.
 - (ii) Professional liability insurance, if applicable.
 - (iii) Any other insurance described in the solicitation for this Contract, if applicable.
- c. **Type of Coverage and Increase of Limits of Liability.** Any type of insurance or any increase of limits of liability not described in this Contract that Contractor requires for its own protection or on account of any statute, rule, or regulation shall be its own responsibility and shall be provided at Contractor's own expense.
- d. **Responsibility or Liability.** The carrying of insurance required by this Contract shall not be interpreted as relieving Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order.

- 20. **Standard of Care.** The services of Contractor and its subcontractors and subconsultants at any tier, if any, shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the services that are the subject of this Contract. Contractor shall be liable to my529 for claims, liabilities, additional burdens, penalties, damages, or third-party claims (i.e., another Contractor's claim against my529), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.

21. **State Reviews and Limitations.** The right of my529 or the State to perform plan checks, plan reviews, or other reviews and/or comment upon the services of Contractor, as well as any approval by my529 or the State, shall not be construed as relieving Contractor from its professional and legal responsibility for services required under this Contract. No review by my529 or the State or any entity/user, approval or acceptance, or payment for any of the services required under this Contract shall be construed to operate as a waiver by my529 or the State of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract, and Contractor shall be and remain liable to my529 or the State in accordance with applicable law for all damages to my529 or the State caused by the wrongful acts, errors, and/or omissions of Contractor or its subcontractors or subconsultants at any tier, if any.
22. **Public Information.** Because my529 is exempt from the provisions of the Government Records Access and Management Act (GRAMA), neither proposals submitted to my529 nor are my529's contracts are public records. Accordingly, except as is explained below, the Contract will not be open for public inspection.

In accordance with the Procurement Code, Utah Code Ann. Section 63G-6a-2002(3), my529 shall keep, and make available to the public, a written record of the procurement, which record shall consist of:

- A. The name of the provider from whom the procurement is made;
 - B. A description of the procurement item;
 - C. The date of the procurement; and
 - D. The expenditure made for the procurement.
23. **Patents, Copyrights, Etc.** Contractor will release, indemnify and hold my529, its officers, agents and employees harmless from liability of any kind or nature, including Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this Contract.
 24. **Assignment/Subcontract.** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of my529.
 25. **Default and Remedies.**
 - a. **Contract in Default.** Any of the following events will constitute cause for my529 to declare Contractor in default of this Contract:
 - (i) Nonperformance of contractual requirements; or
 - (ii) A material breach of any term or condition of this Contract.
 - b. **Notice of Default.** Should Contractor be in default under any of the provisions of this Contract, my529 will issue a written notice of default providing a 10-day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, my529 may do one or more of the following:
 - (i) Exercise any remedy provided by law;
 - (ii) Terminate this Contract and any related contracts or portions thereof;
 - (iii) Impose liquidated damages, if liquidated damages are listed in the Contract; or
 - (iv) Suspend Contractor from receiving future solicitations.

26. **Force Majeure.** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God, and/or war, which is beyond that party's reasonable control. my529 may terminate this Contract after determining such delay or default will reasonably prevent successful performance of this Contract.
27. **Procurement Ethics.** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to my529 or the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of my529 or the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (Utah Code Ann. Section 63G-6-1002).
28. **Conflict of Terms.** In order for any terms and conditions of Contractor to apply to this Contract, they must be in writing and attached to this Contract. No other terms and conditions of Contractor will apply to this Contract, including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the terms and conditions in the Contract, the order of precedence shall be:
 - A. Attachment A: Terms and Conditions;
 - B. Contract Signature Page(s);
 - C. Attachment B: my529's Request for Proposals
 - D. Attachment C: Consultant's Response to my529's Request for Proposals
 - E. Terms and Conditions of Contractor, if any.
29. **Compliance.** Contractor agrees to abide with all applicable federal, state, county, and city laws and regulations and to be responsible for obtaining and/or possessing any and all permits and licenses that may be required.
30. **Regulatory Restrictions and Change of Ownership.** If a regulatory restriction is implemented that prohibits Contractor's ability to abide by a provision of the Contract, Contractor must notify my529 in writing within 30 calendar days. If, by the sole and reasonable determination of my529, no alternative solution is available, my529 reserves the right to terminate the Contract.

Contractor must notify my529 of any change of ownership by Contractor. my529 reserves the right to terminate the Contract if the nature of the ownership of Contractor changes subsequent to the Contract start date.
31. **Acceptance of Services Rendered.** my529, through its designated agents and representatives, is the sole determining judge of whether services rendered under the Contract satisfy the requirements as identified in the Contract.
32. **Anti-Collusion Agreement.** Contractor represents and warrants that it has not divulged its proposal to, or colluded with, any other offer or party to a proposal.
33. **Management Reports.** Upon request, Contractor shall summarize and concisely report pertinent information to my529 in a timely manner throughout the duration of this Contract.
34. **Taxes—Contractor.** Contractor shall be responsible for and pay all taxes levied or incurred against Contractor in connection with the performance of any services under the Contract, including taxes levied or incurred against Contractor's income, inventory, property, sales, or other taxes.

35. **Taxes—my529 Exemption Status.** my529 is exempt from State of Utah sales and excise taxes. Exemption certification information appears on all purchase orders issued by my529. Such taxes do not apply to my529 unless otherwise noted.
36. **Privacy.** Contractor shall follow these privacy practices:
- A. Respect the privacy of my529 account owners, successors, and beneficiaries by not sharing any data with any parties without the express prior written consent of my529; and
 - B. Comply with the my529 Privacy Policy (Part 12 of the August 17, 2018, my529 Program Description), which can be downloaded from the my529 website at my529.org.
37. **Account.** The Contract is exclusive to Contractor. In the event the Contract is not renewed or is terminated, Contractor will expedite the transfer of my529 materials, including all materials produced during the Contract to my529.
38. **Confidentiality.** All data relating specifically to my529's business, and other information identified as confidential by my529, are confidential information of my529. Contractor's proprietary software, tools, methodologies, techniques, ideas, discoveries, inventions, know-how and any other oral or written information identified as confidential by Contractor, are the confidential information of Contractor. Contractor's confidential information includes Contractor's confidential information owned prior to date of this Agreement as well as confidential information developed during the course of this engagement. my529's confidential information and Contractor's confidential information are collectively referred to as "Confidential Information." Each party shall use the Confidential Information of the other party only in furtherance of the purposes of this Contract and shall not disclose such Confidential Information to any third party without the other party's prior written consent. Each party agrees to take reasonable measures to protect the confidentiality of the other party's Confidential Information and to advise their employees of the confidential nature of the Confidential Information and of the prohibitions herein.

my529's Confidential Information includes:

- information or material that is subject to privacy protections or disclosure restrictions under federal law, state law, or the policies and procedures of my529;
- my529 financial information, system configuration, data, business information, concepts, business models, marketing plans, proposals, business plans (including processes, initiatives, and/or plan changes under development), financial data, investment information, investment option design, account owner and prospect lists, account owner information, personnel data, Agreement information, properties, methods of operation, software (including source code, specifications, data, works in process, alpha and beta versions, design documents, and documentation), trade secrets, inventions, discoveries, and know-how; and
- any information, which by the circumstances of disclosure or the nature of the information itself, should reasonably be understood to be confidential.

my529's Confidential Information does not include any information that:

- was publicly known and made generally available in the public domain prior to the time of disclosure;
- becomes publicly known and made generally available after disclosure by my529 to Contractor through no action or inaction of Contractor;
- is already in the possession of Contractor at the time of disclosure by my529 as shown by Contractor's files and records;
- is obtained by Contractor from a third party without a breach of such third party's obligations of confidentiality;

- is independently developed by Contractor without use of or reference to my529's Confidential Information, as shown by documents and other competent evidence in Contractor's possession; or
- is required by law to be disclosed by Contractor, provided that Contractor gives my529 prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.

Notwithstanding anything to the contrary contained in this Contract, neither party shall be obligated to treat as confidential any information disclosed by the other party (the "Disclosing Party") which: (1) is rightfully known to the recipient prior to its disclosure by the Disclosing Party; (2) is released by the Disclosing Party to any other person or entity (including governmental agencies) without restriction; (3) is independently developed by the recipient without any reliance on Confidential Information; or (4) is or later becomes publicly available without violation of this Contract or may be lawfully obtained by a party from any nonparty. Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including any subpoena or other similar form of process, provided that (and without breaching any legal or regulatory requirement) the party to which the request is made provides the other party with prompt written notice and allows the other party to seek a restraining order or other appropriate relief.

39. **Publicity.**

- Contractor may not make any announcement regarding the award of this Agreement nor disclose the nature of the Contractor's association and work with my529 to any third party without the prior written consent of my529.
- With the prior written approval of my529, Contractor may disclose that my529 is a client and the general nature of the work if the nature of the Contractor's association and work with my529 is not described in detail.
- In accordance with the Utah Code's Government Records Access and Management Act (GRAMA), contracts entered into by my529 are not public records. Accordingly, Contractor may not disclose any terms of this Agreement without the prior written approval of my529.

40. **Entire Contract.** This Contract, including all attachments and documents incorporated hereunder, and the related my529 solicitation documents, if any, constitutes the entire Contract between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Contract shall supersede any additional or conflicting terms or provisions that may be set forth or printed on Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of my529. The parties agree that the terms of this Contract shall prevail in any dispute between the terms of this Contract and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Contract.

ATTACHMENT B | EVALUATION SCORE SHEET**RFP No. 2021-003 Financial Consulting Services****Name of Respondent:** _____**Evaluator:** _____**Date:** _____**Score will be assigned as follows:**

- 0 = Failure, no response
 1 = Poor, inadequate, fails to meet requirement
 2 = Fair, only partially responsive
 3 = Average, meets minimum requirement
 4 = Above average, exceeds minimum requirement
 5 = Superior

Proposal Evaluation

Part B Evaluation Criteria	Points Possible	Score (0-5)	Weight (0-30)	Points
1. Respondent Background and Personnel – Part B, Section 1.2 (270 points possible)				
• Firm's experience and services provided (1.2 - A)	150		x30	
• Firm's organizational structure and changes (1.2 – B, C, D)	20		x4	
• Key personnel and experience (1.2 - E, F, G)	85		x17	
• Professional staff turnover (1.2 - H)	15		x3	
2. Firm's Experience as Financial Consultant – Part B, Section 1.3 (430 points possible)				
• Firm's overall experience (1.3 – A)	75		x15	
• Experience with other 529 programs (1.3 – B)	50		x10	
• Qualifications and Experience to meet mandatory minimum requirements (1.3 – C)	255		X51	
• Consulting accounts lost/discontinued (1.3 – D)	50		x10	
3. References – Part B, Section 1.4 (100 points possible)				
• References (1.4)	100		x20	
Subtotal - Technical Proposal Evaluation Points:	(800 points possible)		Subtotal:	
• Cost proposal (Part B, Section 2.1)	200			
Total	(1,000 points possible)		Total:	